

Performance Bond To Demonstrate Closure And/Or Postclosure Care

Date bond executed: _____ Effective Date: _____
(insert date executed) (insert effective date)

Principal: (insert legal name and business address of owner or operator)

(Name)

(Street address)

(City, state, ZIP)

Type of organization: _____
(insert "individual," "joint venture," "partnership," or "corporation")

Commonwealth/State of incorporation: _____
(insert appropriate state name)

Surety(ies): (Name(s) and business address(es) of Surety(ies):

(Name)

(Headquarters street address)

(City, state, ZIP)

EPA Identification Number, name, address, and closure and/or postclosure amount(s) for each facility guaranteed by this bond, indicating closure and postclosure amounts separately:

(EPA Identification Number)

(Facility name)

(Street address)

(City, state, ZIP)

(closure amount)

(postclosure amount)

Total penal sum of bond: _____
(insert total penal sum of bond)

Surety's Bond Number: _____
(insert bond number)

Know All Persons By These Presents, That We, the Principal and Surety(ies) hereto are firmly bound to the Energy and Environment Cabinet, hereinafter called the Cabinet, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under Kentucky Revised Statutes Chapter 224, to have a permit in order to own or operate each hazardous waste site or facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and postclosure care, as a condition of the permit(s), and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

And if the Principal shall faithfully perform postclosure care of each facility for which this bond guarantees postclosure care, in accordance with the postclosure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended.

Or, if the Principal shall provide alternate financial assurance as specified in 401 KAR 34:080 through 34:130, and obtain from the Director of the Division of Waste management in the Cabinet, hereinafter the Director of the Division, written approval of such assurance, within ninety (90) days after the date notice of cancellation is received by both the Principal and the Director of the Division, from the Surety(ies) then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Director of the Division that the Principal has been found in violation of the closure requirements of 401 KAR Chapter 34 for a facility for which this bond guarantees performance of closure, the Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the Director of the Division.

Upon notification by the Director of the Division that the Principal has been found in violation of the postclosure requirements of 401 KAR Chapter 34 for a facility for which this bond guarantees performance of postclosure care, the Surety(ies) shall either perform postclosure care in accordance with the postclosure plan and other permit requirements or place the postclosure amount guaranteed for the facility into the standby trust fund as directed by the Director of the Division.

Upon notification by the Director of the Division that the Principal has failed to provide alternate financial assurance as specified in 401 KAR 34:080 through 34:130, and obtain written approval of such assurance from the Director of the Division during the ninety (90) days following receipt by both the Principal and the Director of the Division of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Director of the Division.

The Surety(ies) hereby waive(s) notification of amendments to the closure plans, permits, applicable laws, statutes, rules, and regulations and agree(s) that no such amendment shall in any way alleviate its/their obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Director of the Division, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Director of the Division, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Director of the Division.

(The following paragraph is an optional rider that may be included but is not required.)

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or postclosure amount, provided that the penal sum does not increase by more than twenty (20) percent in any one (1) year, and no decrease in the penal sum takes place without the written permission of the Director of the Division.

In Witness Whereof, the Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 401 KAR 34:080 as such regulations were constituted on the date this bond was executed.

Principal

_____	_____
(Signature)	(Signature)
_____	_____
(Name, typed)	(Name, typed)
_____	_____
(Title, typed)	(Title, typed)

(Corporate seal):

Corporate Surety(ies)

_____	(Corporate Seal):
(Name)	

(Street Address)	

(City, State, Zip)	

Commonwealth/State of incorporation: _____ Liability limit: \$ _____

_____	_____
(Signature)	(Signature)
_____	_____
(Name, typed)	(Name, typed)
_____	_____
(Title, typed)	(Title, typed)

*(For every co-surety, provide signature(s), corporate seal,
and other information in the same manner as for Surety above.)*

(Name)

(Street Address)

(City, State, Zip)

Commonwealth/State of incorporation: _____ Liability limit: \$ _____

(Signature)

(Signature)

(Name, typed)

(Name, typed)

(Title, typed)

(Title, typed)

(Corporate seal):

Bond premium: \$ _____

(Note: Use of this form is required by 401 KAR 34:080.)

(Note: The Trust Agreement, Form number DEP-6035A, required by 401 KAR 34:080 must be submitted with this form.)

DEP-6035C, effective 2/10/94